IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO. 334 OF 1996

In the matter of Magna
Elastomeric Rollers Pvt. Ltd.

Ashwinkumar K. Mange ... Petitioner

Mr.H.T. Thakker for Petitioner.

Mr. Atul Damle for Respondents.

CORAM : A.M. KHANWILKAR,J.
DATED : JUNE 22, 2005

P.C.

. Heard counsel for the parties.

. This is petition under Section 433 and 434 of the companies Act for winding up of respondent company as the respondent company is unable to pay its debts. The Petitioner claims to have sold and delivered the goods to respondent company for the aggregate value of Rs.2,12,113.50 some time in 1994. The respondent company inspite of repeated reminders, failed to pay the said amount. As a result of which, statutory notice was sent by the Petitioner on 22.10.1994. Inspite of service of the said notice, the respondent company did not bother to pay the outstanding amount as claimed. Eventually the present petition came to be filed.

This petition was admitted on 6.2.1998 and has been

duly advertised.

. In the reply affidavit, it is stated that the goods supplied by the Petitioner were of sub standard quality. The question is whether this stand is bona fide or not. I have no hesitation in taking a view that the said stand is not bona fide. It is fairly accepted that post dated cheques were issued by the respondent company to discharge the outstanding dues. However, the cheques were returned back to Petitioner as dishonoured. Proceedings under Section 138 of the Negotiable Instruments Act in respect of the said cheques are going on. Suffice it to observe that the issuance of cheques by the respondent company amounts to acknowledgment of the liability to pay amount referred therein. As the respondent company has failed to pay its debt inspite of statutory notice and has offered no explanation to the statutory notice, there is legal presumption which would arise that the respondent company is unable to pay its debts. It is also fairly accepted by the counsel for the respondent company that there are recovery proceedings pending against respondent company resorted to by the financial institutions on account of outstanding dues of the financial institutes. The assets of the respondent company

have been taken over by the State Finance Corporation and disposed off long back. In other words, the company has stopped its activities. Even for these reasons, it is amply clear that the respondent No. 1 is unable to pay its dues. Accordingly, this petition ought to succeed in terms of prayer Clause (a) and (b). Ordered accordingly.

(A.M. KHANWILKAR,J.)